Supreme Court of [illegible]

October Term, [illegible]

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA and PETER E. MORTENSEN, [illegible] A. W. GATOV, WILLIAM STEVENS, JR. and [illegible] HEBERT, as Members thereof,

Appellants,

vs.

SAN FRANCISCO SHIPYARD AND REPAIRING ASSOCIATION, THE CHANTIER, OAK SHIPYARD CORPORATION, ATSON, INC., INDUSTRIAL SHIPYARD ASSOCIATION, UNITED SHIPYARD ASSOCIATION, INC., WORTH DEFENSE COMPANY, THE AMERICAN WELDING INSTITUTE, G. I. TEUCHERT COMPANY, RAILWAY TERMINAL AND WAREHOUSE COMPANY,

Appellees.

On Appeal from the United States District Court for the Northern District of California

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MOTION TO AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 846

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA and PETER E. MITCHELL, WILLIAM M. BENNETT, A. W. GATOV, WILLIAM SYMONS, JR. and FRED P. MORRISSEY, as Members thereof,

Appellants,

vs.

BALTIMORE SHIPPERS AND RECEIVERS ASSOCIATION, INC., THE CHARTER OAK SHIPPERS COOPERATIVE ASSOCIATION, INC., INDUSTRIAL SHIPPERS ASSOCIATION, INC., UNITED SHIPPERS ASSOCIATION, INC., CHARLES J. WORTH DRAYAGE COMPANY, LOS ANGELES WHOLESALE INSTITUTE, G. I. TRUCKING COMPANY, REDWAY TRUCK AND WAREHOUSE COMPANY,

Appellees.

On Appeal from the United States District Court for the Northern District of California

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MOTION TO AFFIRM

Appellees, Baltimore Shippers and Receivers Association, Inc., The Charter Oak Shippers Cooperative Association, Inc., Industrial Shippers Association, Inc., and United Shippers Association, Inc., hereby move to affirm

the judgment of the district court on the ground that the questions presented are so unsubstantial as not to warrant further argument.

OPINION BELOW

The opinion of the United States District Court for the Northern District of California is reported at 268 F. Supp. 836. A copy of said opinion and the Court's subsequent Judgment and Order are printed in Appendix A to Appellants' Jurisdictional Statement.

JURISDICTION

Appellants seek to invoke the jurisdiction of this Court under 28 U.S.C. § 1253.

STATUTES INVOLVED

Certain of the statutes involved are set forth at pages 3-4 of the Jurisdictional Statement, and Appendices B and C thereto. The remaining statutes involved are sections 2100, 2107-2113, 3668-3670, 4111-4112, and 4140-4144 of the California Public Utilities Code which are contained in Appendix A hereto; and The National Transportation Policy (54 Stat. 899), and sections of The Interstate Commerce Act, 49 U.S.C. §§ 302(a), 302(b), and 304(a)(4a), which are contained in Appendix B hereto.

QUESTIONS PRESENTED

The questions presented by appellants are inaccurate and incomplete. Based upon the decision of the District Court, the questions before this Court fairly may be stated as follows:

1. Whether the Interstate Commerce Act preempts the field of economic rate regulation of interstate motor transportation of property for shippers' associations.

2. Whether the scheme of rate regulation sought to be imposed by appellants violates the Commerce Clause of the Constitution of the United States.

STATEMENT OF THE CASE

Appellees are membership associations of shippers recognized by the Interstate Commerce Act. These associations arrange for the interstate movement of their members' freight, on a non-profit basis, for the purpose of securing economical transportation through volume rates. Utilizing the services of rail and motor carriers operating in interstate commerce, each association arranges for the assembly and consolidation of property, movement of such property, and break-bulk and distribution of the consolidated shipments.

These appellees operate physically in a manner similar to interstate freight forwarders subject to regulation by the Interstate Commerce Commission under 49 U.S.C. §§ 1001-1022. Appellee associations are excluded from regulation under Part IV of the Interstate Commerce Act by virtue of 49 U.S.C. § 1002(c)(1).

As pertinent here, appellee associations arrange for the transportation of property between points in other states and points within the State of California. In order to assemble or distribute this property within California, the associations employ motor carriers operating in interstate commerce. Appellants have established in published tariffs minimum rates, rules and regulations for the transportation of property by motor vehicle between points in California including points within the commercial zones of San Francisco and Los Angeles. The demarcation of such zones is determined by application of federal law and transportation therein is conditionally exempt by virtue of 49 U.S.C. § 303(b)(8).

For a period of at least five years prior to filing of the original complaint, motor carriers employed by the appel-

lee associations in California commercial zones assessed as full compensation for their services charges not related to, and substantially lower than, California minimum rates. Appellants' claim of jurisdiction and attempts to force motor carriers employed by appellee associations to charge no less than California minimum rates for interstate services within commercial zones occasioned the instant action.

On May 6, 1966, these appellees filed a complaint for declaratory judgment and permanent injunction in the United States District Court for the Northern District of California. Appellees maintain that the scheme and program of California rate regulation upon interstate commerce will cause irreparable injury to appellees, will substantially interfere with the conduct of their operations, and will prevent the free flow of commerce between points in other states and points within the State of California.

Appellees requested the District Court to declare (1) that appellants' scheme of rate regulation is inapplicable to interstate motor carrier transportation of property for appellees, and (2) that appellants lack jurisdiction to regulate the rates and charges of motor carriers on interstate transportation of property within California commercial zones. Appellee associations also sought a permanent injunction (1) enjoining the publishing of tariffs applicable to commercial zone interstate transportation of property, (2) enjoining the harassment of, and interference with, the businesses of appellees and motor carriers performing transportation services for them, and (3) enjoining the assertion and enforcement of various penalty provisions under the California Public Utilities Code, *viz.*, *inter alia*, sections 2100, 2107-2113, 3668-3670, 4111-4112, and 4140-4144.

In granting declaratory relief and permanently enjoining enforcement of the California minimum rate regula-

tions the district court held (1) "that the Interstate Commerce Act has pre-empted the field" (268 F.Supp. at 842); and (2) "that even in the absence of pre-emption, the scheme of rate regulation defendants seek to impose violates the Commerce Clause of the United States Constitution" (268 F.Supp. at 844-845).[1]

THE QUESTIONS ARE UNSUBSTANTIAL AND DO NOT WARRANT FURTHER ARGUMENT

Appellants assert eight points in support of their position that the questions are substantial. "Reasons" cited by Appellants in urging this Court to consider the merits of the case have no basis in fact or law. Appellees treat each of these reasons *seriatim.*

1. The meaning and effect of 49 U.S.C. § 303(b)(8) do not present a question of first impression as appellants claim. On at least three occasions[2] this Court has interpreted that section directly, and in a fourth instance[3] affirmed *per curiam* a district court decision construing the section. The lack of more frequent judicial constructions of section 303(b)(8) can be attributed only to its absolute clarity. There is thus no need for this Court to interpret the section once more.

2. Appellants maintain that this appeal presents the question "whether the Commerce Clause prohibits the exercise of regulatory powers of the States with respect to local transportation which Congress has expressly ex-

[1] The Court referred to, but refrained from ruling upon Appellees' challenge to the regulations on Due Process and Equal Protection grounds (268 F.Supp. at 841-842).

[2] *United States* v. *Capital Transit Co.*, 325 U.S. 357, 360-361 (1945); *Morris* v. *McComb*, 332 U.S. 422, 435-437 (1947); *United States* v. *Capital Transit Co.*, 338 U.S. 286, 292 (1949).

[3] *Verbeem* v. *United States*, 154 F.Supp. 431 (E.D.Mich 1957), *aff'd. per curiam sub nom. Amlin* v. *Verbeem*, 356 U.S. 676 (1958).

cluded from federal regulation." Appellants maintain two incorrect premises. First, appellants assume that the transportation involved here is "local." Secondly, they assume that "Congress" excluded commercial zones from regulation. We treat the latter point initially.

Congress has "adopted a comprehensive plan for regulating the carriage of goods by motor truck in interstate commerce." *Castle* v. *Hayes Freight Lines*, 348 U.S. 61, 63 (1954). By the commercial zone exemption, 49 U.S.C. § 303(b)(8), Congress relinquished no power to the states. To the contrary, by section 303(b)(8) Congress affirmatively empowered the Interstate Commerce Commission to subject all commercial zones or any one such zone to complete economic regulation at any time upon a finding that the National Transportation Policy requires such action. *Only* the Interstate Commerce Commission has the *power* and the *duty* to remove the commercial zone exemption when that is necessary to promote the efficiency of motor carrier transportation in interstate or foreign commerce. *Charles Noeding Trucking Co.* v. *United States*, 29 F. Supp. 537 (D.N.J. 1939); *Commercial Zones and Terminal Areas*, 62 M.C.C. 151 (1953); *St. Louis, Mo.—East St. Louis, Illinois Commercial Zone*, 61 M.C.C. 489 (1953).

Appellants incorrectly assume that the transportation in question is purely "local transportation." Because the transportation within a California commercial zone such as Los Angeles is merely either the commencing or terminating of freight which is moving or has moved perhaps 3,000 miles in a "continuous flow of commerce," such transportation can hardly be considered "local" in the same sense as a shipment which originates *and* terminates within the Los Angeles commercial zone. The transportation of passengers between rail terminals within the City of Chicago, involved in *Railroad Transfer Service* v. *Chicago*, 386 U.S. 351 (1967), is akin to the transportation in the instant case.

The commercial zone transportation involved here is a federally created concept. To say that commercial zone transportation is local and that transportation outside the zone, but yet within California is not local, is to ignore the realities of the situation. The uncontroverted evidence before the district court established that westbound trailers and boxcars which move across country will arrive in Los Angeles or San Francisco with freight in the same trailer or boxcar that will be destined to points both within and without the commercial zone (Plaintiffs' Exhibit No. 6, pages 5-7; Plaintiffs' Exhibit No. 7, pages 12-14). Transportation outside the commercial zone is subject to full economic regulation by the Interstate Commerce Commission. It is both illogical and harmful to subject the same trailer or boxcar to two masters simultaneously.[4]

Moreover, the evidence adduced at the trial established that the economic regulation at issue portends "widespread" adverse effects "covering a variety of interests throughout the Country and in California." (Transcript, page 31). Nowhere in the testimony did appellants demonstrate that the transportation in question is imbued with a local interest. To the contrary, the evidence conclusively showed that regulation of the commercial zone by California "will impede the free flow of interstate commerce and create a situation which will restrict the ability of interstate shippers to market freely their products within commercial zones." (Transcript, page 33).

Appellants next assert that the question in this case "affects regulation of local transportation of passengers and property in every city of every state in the nation. . . . [including] the regulation of taxicabs and bus lines operating to and from railroad depots, bus terminals, and

[4] See also testimony of witness Norrbom, Plaintiffs' Exhibit No. 1, pages 27-30, for a lucid discussion of the evils of the "dual master" concept in the instant circumstances.

airports." This case, however, does not deal with taxicabs or bus lines, but with the continuous transportation of interstate freight which will be substantially and unreasonably burdened and obstructed as a result of state regulation. Moreover, the retention of jurisdiction over the commercial zone by the Interstate Commerce Commission,[5] and the inability of the states to govern that commercial zone or terminal zone,[6] the two being kindred concepts,[7] are settled matters before this Court.

Appellants next assert, "whether states and cities may lawfully apply uniform, nondiscriminatory regulations to such local service is a question of national importance."[8] The question of uniform, nondiscriminatory regulation is not before this Court, is not a question of law, but one of fact, and therefore not of national importance. Uncontroverted evidence before the district court establishes discriminatory regulation in that "the California minimum rate structure is designed specifically for local intrastate Commerce" and "to compare the services performed by an assembling and distribution carrier with the services performed by a normal intrastate public freight carrier, is to compare unlike operations."[9]

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[5] *United States* v. *Capital Transit Co.*, 325 U.S. 357 (1945).

[6] *United States* v. *Capital Transit Co.*, 338 U.S. 286 (1949); *Railroad Transfer Service, Inc.* v. *Chicago*, 386 U.S. 351 (1967); *Chicago* v. *Atchison, Topeka & Santa Fe R.R.Co.*, 357 U.S. 77 (1958).

[7] *Sea-Land Service, Inc.* v. *United States*, 222 F.Supp. 558 (D. Del. 1963).

[8] No great danger to state interests appears to be on the horizon if this Court sustains the opinion of the district court inasmuch as the commercial zone exemption has been in existence since 1935 and, at least according to the evidence, no other state has attempted to regulate transportation rates within commercial zones (Deposition of Harrell, Plaintiffs' Exhibit No. 6, page 10).

[9] Plaintiffs' Exhibit No. 1, pages 12-13. For a complete discussion on this point see testimony of witness Norrbom at Plaintiffs' Exhibit No. 1, pages 8-14. As a matter of *fact* the district court made

Assuming *arguendo* that the transportation in question is "local," such a fact would not preclude affirmance by this Court. As to preemption, the question is whether the comprehensive scheme of federal control by the Interstate Commerce Act precludes state interference over the economic aspects of interstate motor transportation. Even appellants do not assert that "local" transportation is an important consideration on the merits of the preemption issue. As to the Commerce Clause issue there are two subsidiary questions, both of which were considered by the district court. First, has California acted in an area in which federal jurisdiction is exclusive and the states cannot interfere at all, and secondly, has California acted properly in an area which, *arguendo*, admits of concurrent jurisdiction? *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 154 U.S. 204 (1894).

Under the first subsidiary issue the question of "local" transportation or not is immaterial since the crux of the matter regards only the type of regulation sought to be imposed by the state. *State Corporation Commission* v. *Bartlett & Co., Grain*, 338 F.2d 495 (10th Cir. 1964), *cert. den.* 380 U.S. 964 (1965); *Railroad Commission of Ohio* v. *Worthington*, 225 U.S. 101 (1912); *Wabash, St. Louis and Pacific R. Co.* v. *Illinois*, 118 U.S. 557 (1886). Under the second subsidiary issue, *i.e.*, where concurrent jurisdiction exists, the balancing of the "local" interest only becomes material when it is first concluded that the state seeks to exercise its police powers over interstate commerce. *State Corporation Commission* v. *Bartlett & Co., Grain, supra; Bibb* v. *Navajo Freight Lines*, 359 U.S. 520 (1959); *Lemke* v. *Farmers' Grain Co.*, 258 U.S. 50

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the finding that there was a direct and discriminatory burden on interstate commerce because of violations of the "long and short haul principle," that is, where a motor carrier under California regulation would be forced to charge higher rates for the short haul deliveries within the commercial zone than for the longer haul deliveries outside the commercial zone.

(1922). The district court in this case specifically held that the nature of the regulation involved here is economic and "does not come within the health, safety and welfare, or police power interests which have been recognized to have validity." (268 F.Supp. at 843). Appellants have not questioned the latter finding and thus admit their regulation is economic rather than within their police power. Under those circumstances the question of local interest *vel non* becomes immaterial.

3. Appellants state that "this appeal presents to the Court for the first time the determination of the effect on Section 303(b)(8) of the Interstate Commerce Act of the enactment of sections 1002(c)(1) and 1008 thereof." Appellants then question whether the latter two sections "amend" the former section. Appellants thus attempt to obfuscate the meaning of the district court's decision. That court has not found any "amendments" by subsequent legislation, but has concluded expressly that the comprehensive scheme of regulation under the *entire* Interstate Commerce Act preempts the field. The sections of the Act cited by the district court manifest that comprehensive scheme under federal law. Moreover, the district court had a duty to consider, and did consider the entire Act. It is fundamental that a section of a statute should not be read in isolation from the context of the whole act; and a court should look to the provisions of the whole law, in order to implement its object and policy. *Richards* v. *United States*, 369 U.S. 1 (1962).

4. Appellants here contend that "this appeal presents to the Court for the first time the question of the status of a nonprofit shipper association under section 1002(c)(1) of the Act." Appellants ask, "Is such an association a carrier, or a shipper?" [10] The latter question has already

[10] Appellants also question the district court's discussion regarding the "preferred status" of shippers' associations. It is obvious that associations who are excluded from regulation but yet enjoy the benefits accorded freight forwarders, as under section 1008 of title 49, do in fact enjoy a preferred status.

been answered by appellants since they stipuated that "plaintiff shippers' associations . . . operate as shippers throughout their operations." (Joint Pre-Trial Order in Consolidated Cases, page 19). Moreover, it is incorrect to assert that this Court has before it for the first time the status of nonprofit shippers' associations. Their status and operations were considered by this Court in *United States* v. *Pacific Coast Wholesalers Association*, 338 U.S. 689 (1950), and *Interstate Commerce Commission* v. *Delaware, Lackawanna and Western Railroad Co.*, 220 U.S. 235 (1911).

In the Joint Pre-Trial Order, page 18, Appellants stipulated that "plaintiff shippers' associations operate physically in a manner similar to interstate freight forwarders subject to regulation by the Interstate Commerce Commission. . . ." The status of the freight forwarder and shippers' association is *exactly* the same when each utilizes an assembly and distribution motor carrier serving a California commercial zone. Both are deemed to be shippers when dealing with carriers. *Chicago, Milwaukee, St. Paul & Pacific R. Co.* v. *Acme Fast Freight*, 336 U.S. 465 (1949); *Lifschultz* v. *United States*, 144 F.Supp. 606 (S.D.N.Y. 1956).[11]

5. Appellant here argues that the district court misappied the holding of this Court in *Railroad Transfer Service, Inc.* v. *Chicago*, 386 U.S. 351 (1967). The district court cited that case for the proposition that California cannot impose a comprehensive scheme of rate regulation "under the guise of general safety regulations." The latter point was unequivocally confirmed by this Court in *Railroad Transfer* which involved transportation under 49 U.S.C. § 302(c), the "terminal zone exemption." That

[11] These cases apply to freight forwarder status. The stipulation of facts confirms the status of shippers' associations. See also *United States* v. *Pacific Coast Wholesalers Association*, 338 U.S. 689 (1950).

section was specifically added to the Motor Carrier Act because of a technicality in the wording of 49 U.S.C. § 303 (b) (8), the "commercial zone exemption." *Sea-Land Service, Inc.* v. *United States*, 222 F.Supp. 558 (D.Del. 1963). The physical operations in both nature and scope, and treatment by the Interstate Commerce Commission, under either the terminal zone exemption or the commercial zone exemption are exactly the same. *Sea-Land Service, Inc.* v. *United States, supra; Commercial Zones and Terminal Areas*, 46 M.C.C. 665 (1946).

6. Appellants here assert that the district court misapplied the decision in *State Corporation Commission* v. *Bartlett & Co., Grain*, 338 F.2d 495 (10th Cir. 1964), *cert. den.* 380 U.S. 964 (1965). Appellants would distinguish the case based upon the different exemptions, namely, the agricultural exemption of 49 U.S.C. § 303 (b) (6), and the commercial zone exemption. The *Bartlett* case, however, did not rise or fall upon the legislative history which the Tenth Circuit indicated was "not free from doubt." The result in *Bartlett* was grounded in (1) the comprehensive regulatory powers of the Interstate Commerce Commission over the transportation of property by truck in interstate commerce, (2) the absence of a valid exercise of police power by the state, and (3) the commercial aims of the regulation in question. Both *Bartlett* and the instant case involve interstate motor transportation within a single state. Both involve an assertion by a state of rate jurisdiction over such transportation. And both involve transportation performed under a federal exemption.[12] The facts in the case at bar demand a stronger

[12] Both cases also involve what Appellants would contend is "local" transportation but which the district court here found not to be local. Additionally, both cases involve, in a technical, statutory sense, transportation which is not performed under "common control, management or other arrangement for the through interstate movement" since separate arrangements for "beyond" transportation are made by the shipper.

application of the law in favor of appellees than the facts in *Bartlett* for two reasons. First, in *Bartlett* there existed a stronger local flavor because of an hiatus in the transportation before the grain moved out of state, whereas here no hiatus exists and the transportation in question is part of a "continuous flow." Secondly, in *Bartlett* the court was dealing with an unconditional or mandatory exemption whereas here the exemption in issue is conditional. Thus the power of Congress or the Interstate Commerce Commission over the commercial zone is greater than over transportation of agricultural commodities. The reasoning in *Bartlett* applies *a fortiori* to the facts now before this Court.

7. Appellants contend here that "the effect of the lower court's decision is to upset and overturn a well established portion of California's regulatory program". The latter assertion is unsupported by the evidence adduced at the trial. For at least five years prior to the filing of the complaint in the instant action, appellants admit that they exercised no jurisdiction (J.S. 6). The stipulated facts show that appellees have been shipping into California commercial zones since 1954 and these appellees have "utilized various motor carriers . . . which have assessed and collected as full compensation for their services assembly and distribution charges which are not related to any minimum rates prescribed by the State of California or to any tariffs on file with the California Commission." (Joint Pre-Trial Order in Consolidated Cases, pages 15-17).

Appellants claim that they have "for over 20 years, fairly and effectively regulated interstate transportation within exempt commercial zones." There is not a scintilla of evidence to establish fair and effective regulation over interstate commerce by California. The uncontroverted evidence before the district court indicates that California did not "fairly" regulate interstate commerce within

commercial zones.[13] Finally, appellants maintain that removal of California jurisdiction "will replace harmony and stability with disruption and confusion." Such an assertion is without support in the record. To the contrary, the evidence sets forth in detail that imposition of California minimum rates would cause wide-spread disruption of appellees' operations and traffic patterns, and that the detrimental effects of such rate regulation "would extend to shippers and receivers of freight scattered over much of the Country". (Transcript, pages 27-29). The conclusion is inescapable that an assertion of *appellants'* jurisdiction would cause disruption and confusion.

8. Appellants here contend that a state law may not be struck down upon a "mere showing" that its administration affects interstate commerce, citing *Head* v. *Board of Examiners*, 374 U.S. 424 (1963). The *Head* case is inapposite to the present situation since that case clearly involved a police power, the court stating, ". . . the statute here involved is a measure directly addressed to protection of the public health, and the statute thus falls within the most traditional concept of what is compendiously known as the police power." *Id.* at 428. Also, in *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440 (1960), cited by appellants, this Court was dealing with a local regulation designed to achieve safety and protect the health of local citizens. The *Huron* Court held that the air pollution measure was a "police power." In the instant case no proof was adduced which could establish that the rate regulation in question is either directly or indirectly a police power. Appellees' evidence, to the contrary, does in fact establish that the imposition of Cali-

[13] See deposition of witness Norrbom, Plaintiffs' Exhibit No. 1, pages 8-13. Also see testimony of witness Saunders, Transcript, pages 239-249, on the inflated transportation charges which the California Commission has attempted to foist on interstate carriage through the use of their minimum rates.

fornia minimum rates to interstate transportation within the commercial zone is *economic regulation* (Transcript, pages 289-290). Moreover the district court at 268 F. Supp. 842-843 made specific findings that the California regulation was economic and not a police power. Those findings have not been affirmatively attacked by appellants.

THE DISTRICT COURT CORRECTLY FOUND FEDERAL PREEMPTION

Appellants initially argue that the district court erred in finding the legislative history of § 303(b)(8) inconclusive in its consideration of the preemption question. Despite quotations from the Congressional Record taken out of context by appellants, the District Court was correct in finding that there is little or no meaningful legislative history on the commercial zone exemption. In *Amlin* v. *Verbeem*, 356 U.S. 676 (1958), this Court affirmed the decision in *Verbeem* v. *United States*, 154 F. Supp. 431 (E.D.Mich. 1957), where the district court stated with respect to § 303(b)(8) that "there is no significant legislative history of the Motor Carrier Act of 1935 concerning this exemption." (154 F.Supp. at 433).

However, some insight into the history and reasons for the exemption can be gleaned from statements by the Interstate Commerce Commission with respect thereto. In *Commercial Zones and Terminal Areas*, 46 M.C.C. 665 (1946), the federal agency held:

> The partial exemption provided by [49 U.S.C. § 303 (b)(8)] may be removed at any time, as to any particular municipality, upon a finding by this Commission that the application of all provisions to part II of the act to local motor transportation at such municipality is necessary to carry out the *national transportation policy*. . . [T]he Pennsylvania Motor Truck Association, Inc., opposes the further determination

> of commercial zone boundaries, and proposes instead the "abolition of 'exempt' areas and the assumption of regulation therein under the authority of [303 (b) (8)]" presumably by a finding of the type above indicated. *Such action would in our opinion impede, rather than aid, accomplishment of the national transportation policy. Id.* at 678 (Emphasis added).

The action of appellants in this case has the effect of removing all commercial zone exemptions in California. Thus, imposition of California minimum rates is tantamount to making a determination reserved to the federal agency—that removal of commercial zone exemptions in California is required by the National Transportation Policy.

The National Transportation Policy declares that it is federal policy "to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices. . . ." The determination of these matters is of *national* concern—not local concern. Only the Interstate Commerce Commission is empowered to, or equipped to, delve into these considerations as to interstate transportation. That is, the federal agency *alone* is equipped to perform the balancing function which implementation of the National Transportation Policy, including § 303(b) (8), requires. By definition, the State of California is charged only with protecting its own, as opposed to national interests.

If Congress had intended the states to exercise economic jurisdiction over commercial zones, it would have formulated express provisions therefor. In contrast, 49 U.S.C. § 304(a) (4a) permits the Commission to issue a certificate of exemption to any motor carrier engaged in operation solely within a single state upon a finding that the operation is "in fact of such nature, character, or quantity as not substantially to affect or impair uniform

regulation by the Commission of transportation by motor vehicles engaged in interstate or foreign commerce in effectuating the national transportation policy declared in this Act." That section goes on to state:

> In any case where a motor carrier has become exempt from the provisions of this chapter as provided in this subparagraph, it shall not be considered to be a burden on interstate or foreign commerce for a state to regulate such carrier with respect to the operations covered by such exemption.

The very fact that Congress did not include a provision such as the latter in 49 U.S.C. § 303(b)(8) manifests the absolutely clear proposition that the states may *not* regulate operations of the character described in the commercial zone exemption.[14]

The district court was correct in further supporting its preemption determination by *Railroad Transfer Service, Inc.* v. *Chicago*, 386 U.S. 351 (1967), which construed § 302(c). In its simplest context § 302(c) exempts from federal regulation the operations of a motor carrier serving a terminal area as agent for a regulated railroad, motor carrier or water carrier in transfer, collection or delivery services. On the other hand, the thrust of 303(b)(8) is to exempt a motor carrier serving shippers within the commercial zone *on the same type of service.* In both instances, the exemptions are not mandatory since the Interstate Commerce Commission retains the power to control the § 302(c) operations and the § 303(b)(8) operations.

In the predecessor case to *Railroad Transfer*, *viz.*, *Chicago* v. *Atchison T. & S. F. R. R. Co.*, 357 U.S. 77 (1958), this Court dealing with local regulations over interstate motor transportation under the terminal zone exemption (§ 302(c)) declared (357 U.S. at 86-87):

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[14] The proposition that the state may not step into a commercial zone and control the rates of interstate traffic is fortified by *United States* v. *Capital Transit Co.*, 325 U.S. 357 (1945).

> While the Interstate Commerce has not yet adopted special regulations for interstation transfer service it obviously can do so at any time under [49 U.S.C. § 302(c)]. In the meantime many of the Commission's regulations which generally govern railroad transportation apply to this service. And even without Commission action a number of the provisions of the Interstate Commerce Act itself are self-executing in their application.

The *Atchison* Court concluded (357 U.S. at 87-88, emphasis added):

> National rather than local control of interstate railroad transportation has long been the policy of Congress. *It is not at all extraordinary that Congress should extend freedom from local restraints to the movement of interstate traffic between railroad terminals.* Serious impediments to the efficient and uninterrupted flow of this traffic might well result. . . .

Because of the similarity of the terminal zone and commercial zone exemptions, the above reasoning by the *Atchison* Court applies with equal force here.

Congress has manifested its intention by the Interstate Commerce Act that the power to regulate the economic aspects of interstate transportation within commercial zones is a power reserved exclusively to the Interstate Commerce Commission to be exercised when and if the federal agency determines that the National Transportation Policy requires the removal of the exemption. The states may not intrude in this reserved field.

In further argument that the District Court erred in finding preemption, appellants maintain that reliance by the court upon *State Corporation Commission* v. *Bartlett*, *supra*, is misplaced and that the lower court erred in utilizing portions of the Freight Forwarder Act to support preemption. Appellees have already considered and answered these contentions in their discussion that the issues

are unsubstantial. Suffice it to say that *Bartlett* is dispositive of the instant case, and the lower court fulfilled its duty to consider and to give effect to all parts of the Interstate Commerce Act in deciding the preemption issue.

THE DISTRICT COURT PROPERLY FOUND COMMERCE CLAUSE VIOLATIONS

The Court ruled as a matter of *Constitutional law* that the subject matter sought to be regulated by California—rates for concededly interstate transportation—is, by virtue of the Commerce Clause alone, exclusively within the federal domain. The Court then ruled as a matter of *fact* that the free flow of commerce guaranteed by the Commerce Clause would be impeded by the California minimum rate regulation even assuming the existence of concurrent federal-state jurisdiction over the transportation here involved. Appellants' Jurisdictional Statement fails to recognize this dual holding, and thus injects confusion where none exists.

As the lower court found, the subject matter involved—rates chargeable for products or services sold in interstate commerce—is of a nature which this Court consistently has found to be exclusively a federal matter.[15]

Thus, the District Court was correct as a matter of law in finding the *Worthington* case, *supra*, dispositive of this issue. In *Worthington*, this Court held (225 U.S. at 107-108, 111):

> It is not necessary to review the cases in this Court which have settled beyond peradventure that the na-

[15] *E.g., Wabash, St. Louis & Pacific R. Co.* v. *Illinois*, 118 U.S. 557, 575 (1886); *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 154 U.S. 204, 213 (1894); *Railroad Commission of Ohio* v. *Worthington*, 225 U.S. 101, 107-108, 111 (1912); *United States* v. *Capital Transit Co.*, 338 U.S. 286, 292 (1949). See also *State Corporation Commission* v. *Bartlett & Co. Grain*, 338 F.2d 495, 499 (10th Cir. 1964), *cert. den.*, 380 U.S. 964 (1965).

> tional government has exclusive authority to regulate interstate commerce under the Constitution of the United States; nor to do more than reaffirm the equally well-settled proposition that *over interstate commerce transportation rates the state has no jurisdiction*, and that an attempt to regulate such rates by the state or under its authority is void. . . . And an order made by a state commission under assumed authority of the state which directly burdens or regulates interstate commerce, will be enjoined. (Emphasis added).
>
> * * * *
>
> It is enough to now hold, as we do, that the establishing of the rate in question is an attempt to regulate interstate commerce, and is therefore beyond the power of the state or a commission assuming to act under its authority.

Appellants' attempt to distinguish *Worthington* (J.S. 25-26) is unavailing. If, as appellants urge, that case turned on whether the transportation involved was interstate in nature, the fact that this Court in *Worthington* decided that question affirmatively does not aid appellants. The repeated concession of appellants that the traffic involved in the instant case is interstate in nature merely reinforces the Court's conclusion that *Worthington* controls.

Appellants' statement that this case involves "local" interstate transportation is tantamount to foisting upon this Court an assertion of fact rejected by the Court below. It cannot be overemphasized that the *only* record evidence bearing upon the question whether the transportation is "local" conclusively establishes the contrary. More importantly, the Court specifically held that "local" transportation is *not* involved (268 F.Supp. at 847).

Cases cited by appellants to show that the Commerce Clause "does not prohibit all regulation of interstate commerce by the States" (J.S. 24-25, fns. 7-15) are inapposite. All of such cases relate to various exercises of

state police power intended to protect the health, safety, welfare or morals of the people by protecting them from unsafe highway practices, fraud, polluted air, or *excessive* prices. In direct contrast, in this case, the Court found that the attempted minimum rate regulation is not an exercise of police power, but is commercially and economically motivated. (268 F Supp. at 843) Indeed, to the extent it is relevant, assessments by motor carriers of the higher California minimum rates indisputably would result in higher prices for consumer products since such prices would reflect increased transportation costs. Consumers within and without California would bear the burden of such increased prices.

Other cases cited by appellants [16] were distinguished effectively by the lower court as involving matters of a "purely local nature." (268 F.Supp. at 847). The "local concern doctrine" raised by appellants is inapplicable to this case, since the subject matter involved is exclusively national in scope and does not admit of concurrent state-federal jurisdiction. *Freeman* v. *Hewit*, 329 U.S. 249 (1946); *Missouri* v. *Kansas Natural Gas Co.*, 265 U.S. 298 (1924); *Public Utilities Commission of R. I.* v. *Attleboro Steam & Electric Co.*, 273 U.S. 83 (1927); *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

Appellants would have this Court upset the judgment below on the asserted ground that the lower court found only that "California's minimum rates . . . would increase transportation costs to non-profit shipper associations" (J.S. 27), and that such a finding cannot sustain the conclusion that the minimum rates place an undue burden upon interstate commerce. This contention underscores appellants' misunderstanding of the lower court's decision.

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[16] *Cooley* v. *Board of Port Wardens*, 53 U.S. (12 How.) 299 (1851); *Port Richmond & Bergen Point Ferry Co.* v. *Board of Freeholders*, 234 U.S. 317 (1914); *Wilmington Transportation Co.* v. *Railroad Commission*, 236 U.S. 151 (1915).

The court did, in fact, find that transportation costs would increase, but projected this finding into the inescapable conclusion that "the increase in costs would result in a drying up of some of the traffic and an impairment of the ability of some out-of-state producers to compete in the California market" (268 F.Supp. at 846). The court further found that "the California regulation would impose a trade barrier by artificially impairing the ability of producers in other states to compete with those in California" (268 F.Supp. at 846) In addition, the Court stated (268 F.Supp. at 843):

> It is clear that forcing plaintiff motor carriers to charge higher rates to plaintiff nonprofit shippers results in some competitive advantage to local manufacturers and producers of goods by increasing the costs to distant sellers in the marketing of their goods in California commercial zones.

These findings were based upon evidentiary *facts* which the court found were "nowhere effectively rebutted" (268 F.Supp. at 846). There can be no question, therefore, that such an impediment to the free flow of commerce safeguarded by the Commerce Clause runs afoul of that Clause, and must fall. *Buck* v. *Kuykendall*, 267 U.S. 307 (1925); *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520 (1959); *Tupman Thurlow Co.* v. *Moss*, 252 F.Supp. 641 (M.D.Tenn. 1966); *Ness Produce Co.* v. *Short*, 263 F. Supp. 586 (D. Ore. 1966); *Chicago, Rock Island & Pacific R. R. Co.* v. *Hardin*, 274 F.Supp. 294 (W.D.Ark. 1967).

As stated *supra*, the lower court found that "local" transportation is not involved in the instant case. Assuming *arguendo* that local transportation is involved, the California minimum rate structure still contravenes the Commerce Clause. The lower Court determined that the regulations erected a trade barrier against out-of-state products. This Court has decided uniformly that all state action, which though nominally of local concern, is in point

of fact aimed at interstate commerce, or which, by its necessary operation is a means of gaining local advantage by casting its attendant burdens on those without the state is violative of the Commerce Clause. *Baldwin* v. *Seelig*, 294 U.S. 511 (1935); *Polar Ice Cream & Creamery Co.* v. *Andrews*, 375 U.S. 361 (1964). See also *International Packers Ltd.* v. *Hughes*, 271 F.Supp. 431 (S.D. Iowa 1967).

In attempting to disparage the district court's reliance upon *Lemke* v. *Farmers' Grain Co.*, 258 U.S. 50 (1922), appellants state that the *Lemke* case "involved the regulation of the sale of a commodity—grain—and had nothing to do with safety" (J.S. 27-28). We agree. Appellants have conceded the very reason the decision below must be affirmed.

Of equal significance is a predicate for the court's decision that appellants' failed to attack. The court found as a matter of *fact* that an undue burden would be placed upon interstate commerce by the minimum rates because of the discrimination against interstate commerce resulting from uncontroverted violations of the "long and short haul principle." At 268 F.Supp. 845-846 the Court ruled:

> The testimony of Mr. Norrbom indicates and the defendants' expert, Mr. Lane, agrees that instances would occur under the California tariffs where a motor carrier delivering goods from within a commercial zone would be forced to charge higher rates for the short haul deliveries within the commercial zone than for longer haul deliveries along the same route but outside of the commercial zone. (Deposition of Norrbom, pp. 27-30, Transcript, p. 630.) In the latter situation involving longer haul deliveries along the same route but outside the commercial zone, it is clear that the state is prohibited from regulation by the Motor Carrier Act. This amounts to a direct and discriminatory burden on interstate commerce.

Appellants' silence upon this aspect of the Court's decision can be taken only as a concession of its correctness. In any event, such discrimination clearly violates the Commerce Clause. *Bibb* v. *Navajo Freight Lines*, 359 U.S. 520 (1959); *Morgan* v. *Virginia*, 328 U.S. 373 (1946); *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761 (1945).

CONCLUSION

The decision of the district court is correct. Resting upon sound findings of fact and conclusions of law, the decision does not involve issues which merit further argument before this Court. Therefore, the decision should be affirmed.

Respectfully submitted,

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APPENDIX A

CALIFORNIA PUBLIC UTILITIES CODE:

Chapter II. Violations

§ 2100. *Undercharges; collection; fine; cumulative remedy*

Whenever the commission, after a hearing, finds that any common carrier, other than a railroad corporation, has charged, collected, or received, a lesser compensation for the transportation of persons or property, or for any service in connection therewith, than the applicable rates, fares, and charges, specified in its tariff schedules filed and in effect at the time, or that such carrier has refunded or remitted in any manner or by any device any portion of the rates, fares, or charges so specified without an order of the commission so authorizing, the commission shall require the carrier to collect the undercharges involved and may impose upon the carrier a fine equal to the amount of such undercharges. All such fines shall be paid into the State Treasury to the credit of the General Fund. The remedy and penalty provided by this section shall be cumulative and shall not be a bar to or affect any other remedy or penalty provided for in this part, or to the exercise by the commission of its power to punish for contempt. (Added Stats. 1963, c. 1877, p. 3861, § 1.)

* * * *

§ 2107. *Residuary penalty*

Any public utility which violates or fails to comply with any provision of the Constitution of this State or of this part, or which fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500) nor more than two thousand dollars

($2,000) for each offense. (Stats. 1951, c. 764, p. 2098, § 2107.)

§ 2108. *Separate offense for each day*

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense. (Stats. 1951, c. 764, p. 2098, § 2108.)

§ 2109. *Imputed violations*

In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public utility. (Stats. 1951, c. 764, p. 2098, § 2109.)

§ 2110. *Violation by officer, agent, or employee of public utility; misdemeanor; penalty*

Every public utility and every officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the Constitution of this state or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance in a case in which a penalty has not otherwise been provided is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment. (As amended Stats. 1967, c. 520, p. —, § 1.)

§ 2111. *Penalty for violations by persons or corporations not a public utility*

Every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the Constitution of this state relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance, in a case in which a penalty has not otherwise been provided for such corporation or person, is subject to a penalty of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) for each offense. (As amended Stats. 1967, c. 838, p. —, § 1.)

§ 2112. *Violation by officer, agent, or employee of corporation not a public utility; misdemeanor; penalty*

Every person who, either individually, or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in such violation or noncompliance, in a case in which a penalty has not otherwise been provided for such person, is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment. (Stats. 1951, c. 764, p. 2099, § 2112.)

§ 2113. *Contempt of commission*

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regu-

lation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto. (Stats. 1951, c. 764, p. 2099, § 2113.)

* * * *

Article 6. Rates

§ 3668. *Evasion by carrier*

No highway permit carrier, or any officer, or agent thereof, or any person acting or employed by it, shall, by means of known false billing, classification, weight, weighing or report of weight, or by any other device, assist, suffer, or permit any corporation or person to obtain transportation for any property between points within this State at rates less than the minimum rates or more than the maximum rates then established or approved by the commission. (Stats. 1951, c. 764, p. 2119, § 3668.)

§ 3669. *Evasion by others*

No person, corporation, or any officer, agent, or employee of a corporation shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to the content or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a highway permit carrier, or any of its officers, agents, or employees, seek to obtain or obtain transportation for property at less than the minimum rates or charges or more than the maximum rates or charges established or approved by the commission. (Stats. 1951, c. 764, p. 2119, § 3669.)

§ 3670. *False allowance, rebate, or payment for damage*

No person or corporation, or any officer, agent, or employee of a corporation, shall knowingly, directly or indirectly by any false statement or representation as to cost or value or the nature or extent of damage, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit or deposition, or upon any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate, or payment for damage in connection with or growing out of the transportation of property, or an agreement to transport property, whether with or without the consent or connivance of a highway permit carrier, or any of its officers, agents, or employees. No highway permit carrier, or any of its officers, agents, or employees, shall knowingly pay, or offer to pay any such allowance, rebate, or claim for damage. (Stats. 1951, c. 764, p. 2119, § 3670.)

* * * *

Article 7

Suspension and Revocation of Permits

§ 4111. *Suspension on request of carrier*

The commission may, at the request of any carrier, suspend the operating permit of the carrier for a definite time during which it is unlawful for the carrier to conduct any operations as a carrier. (Stats. 1951, c. 764, p. 2133, § 4111.)

§ 4112. *Grounds for cancellation, revocation and suspension; fine*

The commission may cancel, revoke, or suspend the operating permit or permits of any carrier upon any of the following grounds.

(a) Any illegally conducted highway carrier operations.

(b) The violation of any of the provisions of this chapter, or of any operating permit issued thereunder.

(c) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.

(d) The conviction of the carrier of any misdemeanor under this chapter.

(e) The rendition of a judgment for any penalty imposed under this chapter.

(f) The failure of a carrier to pay any fee imposed upon the carrier within the time required by law.

As an alternative to the cancellation, revocation, or suspension of an operating permit or permits, the commission may impose upon the holder of such permit or permits a fine of not exceeding five thousand dollars ($5,000). All fines collected shall be deposited at least once each month in the State Treasury to the credit of the General Fund. (As amended Stats. 1961, c. 1444, p. 3291, § 3.)

* * * *

Article 8. Fines and Penalties

§ 4140. *Undercharges; collection; fine; cumulative remedy*

Whenever the commission, after a hearing, finds that any carrier has charged, collected, or received for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation established or approved by the commission, or has directly or indirectly refunded or remitted in any manner or by any device any portion of such minimum rates or charges, or has paid a commission, without an order of the commis-

sion so authorizing, the commission shall require such carrier to collect the undercharges involved and may impose upon the carrier a fine equal to the amount of such undercharges. All such fines shall be paid into the State Treasury to the credit of the General Fund. The remedy and penalty provided by this section are cumulative and shall not be a bar to or affect any other remedy or penalty provided for in this chapter, or to the exercise by the commission of its power to punish for contempt. (Added Stats. 1963, c. 1877, p. 3863, § 5.)

§ 4141. *Violation by carrier, officer, or agent; misdemeanor; penalty*

Every carrier and every officer, director, agent, or employee of any carrier who violates or who fails to comply with, or who procures, aids, or abets any violation by any such carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any carrier, or who procures, aids, or abets any carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is guilty of a misdemeanor, and is punishable by fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both. (Stats. 1951, c. 764, p. 2133, § 4141; Stats. 1955, c. 1518, p. 2796, § 1.)

§ 4142. *Violation by others; misdemeanor; penalty*

Every corporation or person other than a carrier, who knowingly and wilfully, either individually, or acting as an officer, agent, or employee of a corporation, copartnership, or any other person other than a carrier, violates any provision of this chapter or fails to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or who

procures, aids, or abets any carrier in its violation of this chapter, or in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, or requirement, is guilty of a misdemeanor, and is punishable by fine of not more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both. (Stats. 1951, c. 764, p. 2133, § 4142.)

§ 4143. *Violation by carrier, officer, or employee; penalty*

Every carrier and every officer, director, agent, or employee of any carrier who violates or who fails to comply with, or who procures, aids, or abets, any violation by any such carrier of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit issued to any carrier, or who procures, aids, or abets any carrier in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit, is subject to a penalty of not more than five hundred dollars ($500) for each offense. (Stats. 1951, c. 764, p. 2134, § 4143.)

§ 4144. *Violation by others; penalty*

Every corporation or person other than a carrier who knowingly and wilfully, either individually, or acting as an officer, agent, or employee of a corporation, copartnership, or any other person other than a carrier, violates any provision of this chapter or fails to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or who procures, aids, or abets any carrier in its violation of this chapter, or in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, or requirement, is subject to a penalty of not more than five hundred dollars ($500) for each offense. (Stats. 1951, c. 764, p. 2134, § 4144.)

APPENDIX B

Interstate Commerce Act, as amended, 49 U.S.C. § 1, *et seq.*:

National Transportation Policy (54 Stat. 899 [preceding 49 U.S.C. § 1] (1940)):

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title], so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act [chapters 1, 8, 12, 13, and 19 of this title] shall be administered and enforced with a view to carrying out the above declaration of policy.

* * * *

§ 302. *Application of provisions*

(a) The provisions of this chapter apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provisions of facilities for such trans-

portation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is vested in the Interstate Commerce Commission.

(b) Nothing in this chapter shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

* * * *

§ 304. *Powers and duties of Commission—Powers and duties generally*

(a) It shall be the duty of the Commission—

* * * *

(4a) To determine, upon its own motion, or upon application by a motor carrier, a State board, or any other party in interest, whether the transportation in interstate or foreign commerce performed by any motor carrier or class of motor carriers lawfully engaged in operation solely within a single State is in fact of such nature, character, or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy declared in this Act. Upon so finding, the Commission shall issue a certificate of exemption to such motor carrier or class of motor carriers which, during the period such certificate shall remain effective and unrevoked, shall exempt such carrier or class of motor carriers from compliance with the provisions of this chapter, and shall attach to such certificate such reasonable terms and conditions as the public interest may require. At any time after the issuance of any such certificate of exemption, the Commission may by order revoke all or any part

thereof, if it shall find that the transportation in interstate or foreign commerce performed by the carrier or class of carriers designated in such certificate shall be, or shall have become, or is reasonably likely to become, of such nature, character, or quantity as in fact substantially to affect or impair uniform regulation by the Commission of interstate or foreign transportation by motor carriers in effectuating the national transportation policy declared in this Act. Upon revocation of any such certificate, the Commission shall restore to the carrier or carriers affected thereby, without further proceedings, the authority, if any, to operate in interstate or foreign commerce held by such carrier or carriers at the time the certificate of exemption pertaining to such carrier or carriers became effective. No certificate of exemption shall be denied, and no order of revocation shall be issued, under this subparagraph, except after reasonable opportunity for hearing to interested parties. Where an application is made in good faith for the exemption of a motor carrier under this subparagraph, accompanied by a certificate of a State board of the State in which the operations of such carrier are carried on stating that in the opinion of such board such carrier is entitled to a certificate of exemption under this subparagraph, such carrier shall be exempt from the provisions of this chapter beginning with the sixtieth day following the making of such application to the Commission unless prior to such time the Commission shall have by order denied such application, and such exemption shall be effective until such time as the Commission, after such sixtieth day, may by order deny such application or may by order revoke all or any part thereof as hereinbefore authorized. In any case where a motor carrier has become exempt from the provisions of this chapter as provided in this subparagraph, it shall not be considered to be a burden on interstate or foreign commerce for a State to regulate such carrier with respect to the operations covered by

such exemption. Applications under this subparagraph shall be made in writing to the Commission, verified under oath, and shall be in such form and contain such information as the Commission shall by regulations require.